

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
NORTHEASTERN DIVISION**

<b>DANIEL RAY HOWARD,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Civil Action No. CV 02-S-1773-NE</b>
	)	
<b>CAPTAIN CARTER, <i>et .al.</i>,</b>	)	
	)	
<b>Defendants.</b>	)	

**MEMORANDUM OF OPINION**

This is a civil action based upon 42 U.S.C. § 1983, filed by the plaintiff, Daniel Ray Howard. In his *pro se* complaint, plaintiff names as defendants “Captain Carter, Lt. T. Cooper, Lt. Freeman, COI Tucker, COI Fails, COI. J. B. Clark, COI Mayfield, Officer Smiley, Sgt. Edwards, Sgt. Pickett, and Sgt. McGowen.” Plaintiff claims defendants Carter, Cooper, Fails, Tucker, Edwards, Pickett, and McGowan subjected him to excessive force in violation of constitutional rights guaranteed to him under the Eighth Amendment to the United States Constitution. He also complains that Cooper, Freeman, Tucker, Clark, Mayfield, Edwards, Smiley, and Pickett violated his First Amendment right to Freedom of Religion by confiscating some of his religious books and materials. As compensation for the alleged constitutional violations, plaintiff

seeks monetary, declaratory, and permanent injunctive relief. Defendants filed a motion for summary judgment.

On February 2, 2005, the magistrate judge entered a report and recommendation, recommending that defendants' motion for summary judgment be granted. Plaintiff filed no objections to the report and recommendation.

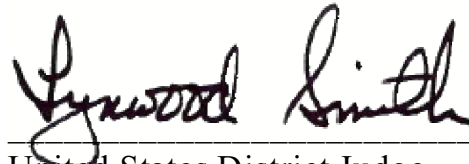
Having carefully reviewed and considered *de novo* all the materials in the file, including the report and recommendation, the court is of the opinion that the magistrate judge's findings of fact and conclusions of law are due to be and they hereby are ADOPTED, and his recommendation is ACCEPTED.

The court expressly finds that plaintiff's Eighth Amendment, excessive-force claims against defendants Carter, Cooper, Fails, Tucker, Edwards, Pickett, and McGowan are barred by the doctrine of *res judicata*. Therefore, the motion for summary judgment filed by said defendants is due to be granted as a matter of law.

The court also expressly finds that there are no genuine issues of material fact showing that defendants Cooper, Freeman, Tucker, Clark, Mayfield, Edwards, Smiley, and Pickett violated plaintiff's First Amendment right to Freedom of Religion. Therefore, the motion for summary judgment filed by said defendants is due to be granted as a matter of law.

An appropriate order will be entered.

DONE this 18th day of March, 2005.

A handwritten signature in black ink, reading "Lynwood Smith". The signature is written in a cursive style with a large, stylized "L" and "S".

---

United States District Judge